

AMENDED IN SENATE MAY 13, 2009

AMENDED IN SENATE MARCH 31, 2009

SENATE BILL

No. 782

Introduced by Senator Yee
(Coauthor: Assembly Member Huffman)

February 27, 2009

An act to add Section 1161.3 to the Code of Civil Procedure, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

SB 782, as amended, Yee. Residential tenancies: domestic violence.

Existing law governs the hiring of real property based on the terms of the agreement, or on the behavior of the parties. Under existing law, a tenant may notify the landlord in writing that he or she, or a household member, was a victim of an act of domestic violence, sexual assault, or stalking, and intends to terminate the tenancy. The tenant is released from any rent payment obligation 30 days following the giving of the notice, or as specified.

Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer of a premises, and includes committing nuisance in this regard. Existing law provides, until January 1, 2012, for the purposes of the law of unlawful detainer, that if a person commits any specified act or acts of domestic violence, sexual assault, or stalking against another tenant or subtenant on the premises, there is a rebuttable presumption affecting the burden of proof that the person has committed a nuisance on the premises if the victim or a member of the victim's household has not vacated the premises.

This bill would create a defense to an action for possession under the unlawful detainer provisions described above, *except as specified*, if

the court determines that (1) the tenant or the tenant's household member is a victim of an act or acts that constitute domestic violence, sexual assault, or stalking, and (2) the notice to vacate is substantially based upon the act or acts against the tenant or a tenant's household member that constitute domestic violence, sexual assault, or stalking, including, but not limited to, an action for possession based on complaints of noise, disturbances, or repeated presence of police. The bill would require a landlord to retain in strictest confidence all information regarding any act or acts of domestic violence, sexual assault, or stalking that is received in confidence from a tenant or a tenant's household member who is a victim, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) Domestic violence is a widespread problem impacting one
4 in three households in the United States in all communities.
- 5 (b) Safe housing for domestic violence victims is essential for
6 safe recovery.
- 7 (c) Countless studies demonstrate that stable, safe housing is a
8 public safety issue, a critical element of ensuring the safety of
9 domestic violence and stalking victims.
- 10 (d) Landlords may evict domestic violence and stalking victims
11 based upon complaints of noise, fighting, or repeated visits from
12 the police to a victim's residence, even though they are results of
13 crimes committed against the victim.
- 14 (e) Domestic violence and stalking victims should not lose their
15 housing because they are being abused and should not be forced
16 to leave their homes in order to report abuse.
- 17 (f) The United States government and many states, cities, and
18 counties already have enacted comprehensive tenants' rights
19 protections for victims of domestic violence and stalking.
- 20 SEC. 2. Section 1161.3 is added to the Code of Civil Procedure,
21 to read:
- 22 1161.3. (a) ~~It~~ Except as provided in subdivision (c), it shall be
23 a defense to an action for possession under ~~paragraph (4)~~

1 *subdivisions 1 or 4* of Section 1161 if the court makes both of the
2 following determinations:

3 (1) The tenant or the tenant's household member is a victim of
4 an act or acts that constitute domestic violence, sexual assault, or
5 stalking.

6 (2) The notice to vacate is substantially based upon the act or
7 acts against the tenant or a tenant's household member that
8 constitute domestic violence, sexual assault, or stalking, including,
9 but not limited to, an action for possession based on complaints
10 of noise, disturbances, or repeated presence of police.

11 (b) In making the determinations under subdivision (a), the court
12 shall consider evidence, which may include, but is not limited to,
13 any of the following:

14 (1) A copy of a temporary restraining order or emergency
15 protective order *lawfully* issued pursuant to Part 3 (commencing
16 with Section 6240), Part 4 (commencing with Section 6300), or
17 Part 5 (commencing with Section 6400) of the Family Code,
18 Section 136.2 of the Penal Code, Section 213.5 of the Welfare and
19 Institutions Code, or Section 527.6 of this code, that protects the
20 tenant or household member from further domestic violence, sexual
21 assault, or stalking *by the same person alleged to be the abuser*
22 *under subdivision (a)*.

23 (2) A copy of a written report by a peace officer employed by
24 a state or local law enforcement agency acting in his or her official
25 capacity, stating that the tenant or tenant's household member has
26 filed a report alleging that he or she is a victim of domestic
27 violence, sexual assault, or stalking.

28 (3) Other written documentation from a qualified third party of
29 the act or acts constituting domestic violence, sexual assault, or
30 stalking.

31 (c) (1) *A court may determine whether a tenant acted as the*
32 *dominant aggressor in the act or acts constituting domestic*
33 *violence, sexual assault, or stalking. In making the determination,*
34 *the court shall consider the factors listed in subdivision (b) of*
35 *Section 13701 of the Penal Code.*

36 (2) *The court may terminate the tenancy of the tenant who acted*
37 *as the dominant aggressor in the act or acts of domestic violence,*
38 *sexual assault, or stalking, while allowing the tenancy of the*
39 *remainder of the tenants to continue undisturbed.*

1 (3) (A) *If the dominant aggressor is a lessee and is an actual*
2 *and imminent threat to the safety of persons on the premises, a*
3 *court may order his or her immediate eviction and issue an order*
4 *to stay away from the premises against the aggressor.*

5 (B) *If the dominant aggressor is not a lessee and is an actual*
6 *and imminent threat to the safety of persons on the premises, a*
7 *court may issue an order to stay away from the premises against*
8 *the aggressor.*

9 (e)

10 (4) If two or more cotenants are parties seeking relief under
11 subdivision (a), and each alleges that he or she was a victim of
12 domestic violence, sexual assault, or stalking perpetrated by another
13 cotenant who is also a party, the court may determine whether a
14 tenant acted as the dominant aggressor ~~in the act or acts constituting~~
15 ~~domestic violence, sexual assault, or stalking. In making the~~
16 ~~determination, the court shall consider the factors listed in~~
17 ~~paragraph (1) of subdivision (b) of Section 13701 of the Penal~~
18 ~~Code, as provided in paragraph (1).~~ A tenant who the court
19 determines was the dominant aggressor in the act or acts
20 constituting domestic violence, sexual assault, or stalking is not
21 entitled to relief under subdivision (a).

22 (d) Unless the tenant or the tenant's household member has
23 obtained a protective order against the alleged abuser to vacate or
24 stay away from the dwelling unit as a result of an act or acts
25 constituting domestic violence, sexual assault, or stalking against
26 the tenant or the tenant's household member, the tenant may not
27 obtain relief under subdivision (a) if all of the following apply:

28 (1) The tenant was granted relief against the landlord under
29 subdivision (a) in an action for possession of the dwelling unit
30 within the previous five years.

31 (2) A subsequent action for possession of the dwelling unit has
32 now been filed.

33 (3) The notice to vacate in the subsequent action for possession
34 is substantially based upon continuing acts constituting domestic
35 violence, sexual assault, or stalking by the same person alleged to
36 be the abuser in the previous action for possession.

37 (e) For the purposes of this section:

38 (1) "Household member" means a member of the tenant's family
39 who lives in the same household as the tenant.

(2) “Protective order” means a temporary restraining order or emergency protective order issued pursuant to Part 3 (commencing with Section 6240), Part 4 (commencing with Section 6300), or Part 5 (commencing with Section 6400) of the Family Code, Section 136.2 of the Penal Code, Section 213.5 of the Welfare and Institutions Code, or Section 527.6 of this code, that protects the tenant or household member from further acts of domestic violence, sexual assault, or stalking.

(3) “Qualified third party” means a peace officer or victim advocate employed by a state or local law enforcement agency, a licensed clinical social worker (LCSW), or a marriage and family therapist (MFT), acting in his or her official capacity.

(4) “Victim of domestic violence, sexual assault, or stalking” means any person who has been, or is currently being, subjected to one or more of the following:

(A) Domestic violence, as defined in Section 6211 of the Family Code or Section 13700 of the Penal Code.

(B) Sexual assault, as defined in Section 261, 261.5, 262, 286, 288a, or 289 of the Penal Code.

(C) Stalking, as defined in Section 1708.7 of this code or Section 646.9 of the Penal Code.

(5) “Written documentation from a qualified third party” means a document signed and dated within the preceding 60 days by a qualified third party stating all of the following:

(A) That the tenant notified the qualified third party that he or she was a victim of domestic violence, sexual assault, or stalking.

(B) The time, date, and location of the act or acts that constitute the domestic violence, sexual assault, or stalking.

(C) That the tenant informed the qualified third party of the name of the alleged perpetrator of the act or acts of domestic violence, *sexual assault*, or stalking, if known to the victim.

(D) *That the qualified third party attests that he or she believes that the act or acts in question are bona fide acts of abuse.*

(f) Nothing in this section shall be construed to affect the tenant’s liability for delinquent rent or other sums owed to the landlord, or the landlord’s remedies in recovering against the tenant for those sums.

(g) A landlord shall retain in strictest confidence all information regarding any act or acts of domestic violence, sexual assault, or stalking that is received in confidence from a tenant or a tenant’s

1 household member who is a victim, except to the extent that
2 disclosure is necessary to provide for a reasonable accommodation
3 for the victim ~~or~~, is otherwise required pursuant to federal, state,
4 or local law, *or is necessary to assist the court in making the*
5 *determinations under subdivision (a)*. The victim may authorize
6 limited or general release of any information otherwise deemed
7 confidential under this subdivision. *The release shall be in writing.*

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